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No. _____

Supreme Court, U.S.
FILED

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JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Petitioner,

—against—

ELIDA QUINTO de GARCIA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA THIRD DISTRICT COURT OF APPEAL**

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Question Presented

Is there a remedy under United States general maritime law for tortious deaths in foreign territorial waters?

Parties

The caption of this petition contains the names of all parties to the proceedings in the lower courts.

The caption, as do those in the lower courts, identifies petitioner Royal Netherlands Steamship Company by the English translation of its Dutch name, Koninklijke Nederlandsche Stoomboot Maatschappij BV.

Petitioner is a wholly owned subsidiary of Koninklijke Nedlloyd Groep NV.

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Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA THIRD DISTRICT COURT OF APPEAL**

Opinion Below

The opinion of the Florida Third District Court of Appeal dated May 20, 1986 (1a) is reported at 489 So. 2d 128.

Jurisdiction

The opinion of the Florida Third District Court of Appeal dated May 20, 1986 (1a) was entered as a judgment on May 20, 1986.

The order of the Supreme Court of Florida dated September 25, 1986 (31a) declining to exercise discretionary jurisdiction to review the decision of the Florida Third District Court of Appeal, was entered as a judgment on September 25, 1986.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Constitutional Provision, Statutes, and Rule Involved

"The judicial Power shall extend * * * to all Cases of admiralty and maritime Jurisdiction * * * ." U.S. Const. Art. III, § 2.

"The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(a) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1).

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued." 46 U.S.C. § 761.

"Suit shall be begun within two years from the date of such wrongful act, neglect, or default, unless during that period there has not been reasonable opportunity for securing jurisdiction of the vessel, person, or corporation to be charged; but after the expiration of such period of two years the right of action hereby given shall not be deemed to have lapsed until ninety days after a reasonable opportunity to secure jurisdiction has offered." 46 U.S.C. § 763.

"The action for seeking reparation for damages or injuries to which this title refers prescribes in one year counting from the date on which the damages occurred, or on which the offended had knowledge of the damage or injury, and who caused it." Guatamala Civil Code § 1673 [translation].

" * * * The defense of lack of jurisdiction of the subject matter may be raised at any time." Fla.R.Civ.P. 1.140 (h)(2).

Statement

More than 3 years after her Guatemalan son fell to his death from a Dutch ship in a Guatemalan port, the Guatemalan respondent sued the Dutch shipowner petitioner in the Florida Eleventh Judicial Circuit Court for wrongful death damages solely under United States general maritime law (2a, 6a, 8a, 10a).

Throughout the litigation petitioner has contended as a matter of law that because the death occurred in Guatemalan waters, the Guatemalan respondent cannot recover from the Dutch petitioner under United States general maritime law.

Petitioner initially raised this defense of lack of subject matter jurisdiction¹ by a pre-answer motion to dismiss (R 6-8; 12a), which was denied (R 134; 14a). Petitioner then pleaded the defense in its answer to respondent's complaint (R163-165; 17a, 18a). The trial judge deferred petitioner's directed verdict motions until the close of all the evidence (Tr. 450, 675-676), when petitioner again moved to dismiss for lack of subject matter jurisdiction (Tr. 721-722) and the trial judge reserved decision (Tr. 725). Petitioner iterated the defense in its post-trial motion for judgment in its favor (R 853-859; 20a), which was denied (R 951-953; 27a).

Petitioner appealed the judgment for respondent and the order denying petitioner's post-trial motions to the Florida Third District Court of Appeal (R 943; 29a), which dismissed the defense of lack of subject matter jurisdiction on the ground that as the Florida Circuit Court had jurisdiction under the "saving to suitors" provision, 28 U.S.C. § 1333(1); *supra*, p. 2, " * * there was no fundamental difference between this suit

¹ Under Florida law this defense "may be raised at any time", Fla.R.Civ.P. 1.140(h)(2); *supra*, p. 3, and " * * cannot be conferred by agreement of the parties nor by the error, inadvertence, action or inaction of the parties. A judgment rendered in an action in which the court lacks jurisdiction of the subject matter is void." [footnote citations omitted]. Trawick, Fla. Prac. & Proc. § 3-3, p. 20 (1985).

and any other tort action in a circuit court in Florida. * * 'General maritime law has usually adopted and followed the principles of general tort law.' " (4a). The Court of Appeal further presumed that " * * Guatemalan or Dutch maritime law would not differ in any material respect from U.S. general maritime law since modern maritime law is comprised of the ancient codes and customs of seafaring nations." (4a).²

The Supreme Court of Florida denied petitioner discretionary review of the Court of Appeal's decision (31a).

² Even if that presumption were correct, respondent did not seek to recover under Guatemalan law, which prescribed the suit, Civil Code § 1673; *supra*, p. 3, or Dutch law, which would apply the law of Guatemala. *Young v. KLM Airlines*, HR 1 May 1936, NJ 1936, 956; *KPM Shipping Co. v. The Liverpool & London & Globe Ins. Co.*, HR 10 Jan. 1941, NJ 1941, 824.

Reasons for Granting the Writ

Certiorari was granted in *Moragne v. States Marine Lines*, 398 U.S. 375 (1970), “ * * to reconsider the important question of remedies under federal maritime law for tortious deaths on state territorial waters.” *Ib.*, p. 377. In “ * * the performance of the Court’s function in declaring the general maritime law * * .”, *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630 (1959), the Court has not yet decided the important question presented by petitioner of whether there is a remedy under that law for tortious deaths in foreign territorial waters.

Cormier v. Williams/Sedco/Horn Constructors, 460 F. Supp. 1010 (E.D. La. 1978), dismissed a general maritime law claim for wrongful death in Peruvian waters on the premise that “high seas” in the Death on the High Seas Act [DOHSA], 46 U.S.C. § 761; *supra*, p. 2, “ * * includes all waters beyond three miles from the shores of a state [of the United States].”, *ib.*, p. 1011, and: “As the Supreme Court held in the [*Mobil Oil Corp. v.*] *Higginbotham* case [436 U.S. 618 (1978)], the *Moragne* [v. *States Marine Lines*, *supra*, general maritime law] wrongful death remedy will not apply when the Death on the High Seas Act covers an incident.” *Ib.*, p. 1012.³

3. The Court has explained that the meaning of “high seas” * * “will depend upon the context, or circumstances attending its use,” *United States v. Rodgers*, 150 U.S. 249, 256 (1893), holding that the Great Lakes are “high seas.” *Cf. United States v. Louisiana*, 394 U.S. 11, 23 (1969), “high seas * * are international waters not subject to the dominion of any single nation”; *United States v. Flores*, 289 U.S. 137 (1933), waters subject to Belgian sovereignty are “high seas.” Most recently, the Court said DOHSA covers “maritime deaths occurring beyond state territorial waters * * more than three miles from shore.” *Offshore Logistics, Inc. v. Tallentire*, ____ U.S. ____, 106 S.Ct. 2485, 2491 (1986).

In accord is *Allan v. Brown & Root, Inc.*, 491 F. Supp. 398 (S.D. Tex. 1980), dismissing a general maritime law claim for wrongful death in Dutch waters because “ * * under the general maritime law there is no cause of action for wrongful death upon foreign waters in the Courts of the United States.”, *ib.*, p. 401, citing *Mobil Oil Corp. v. Higginbotham*, *supra*, which negatively answered the “ * * question [of] whether, in addition to the damages authorized by federal statute [DOHSA], a decedent’s survivors may also recover damages under general maritime law.” 436 U.S., p. 618.

Sanchez v. Loffland Bros. Co., 626 F. 2d 1228, 1230 (5 Cir. 1980), reh. en banc den. 636 F. 2d 315, cert. den. 452 U.S. 962 (1981), held that a general maritime law claim for wrongful death in Venezuelan waters was directly time barred by the 2 year DOHSA limitation, 46 U.S.C. § 763; *supra*, p. 2, contrasting *Public Administrator v. Angela Compania Naviera, S.A.*, 592 F. 2d 58, 63-64 (2 Cir.), cert. dismissed 443 U.S. 928 (1979), holding that a general maritime law claim for wrongful death outside U.S. territorial waters was subject to dismissal for laches measured by the DOHSA 2 year limitation. Both cases affirmatively decided by implication the question remanded in *Renner v. Rockwell Int’l Corp.*, 587 F. 2d 1030, 1031 (9 Cir. 1978), of whether there can be both DOHSA and general maritime law remedies for the same tortious death.

The Florida Court of Appeal’s decision below adds to the body of confused, conflicting lower court opinions on the important question of federal law which has not been, but should be, settled by this Court in executing its “ * * responsibility for fashioning the controlling rules of admiralty law.” *Fitzgerald v. United States Lines*, 374 U.S. 16, 20 (1963). That the rights of the Dutch petitioner and Guatemalan respondent rest upon the ultimately dispositive answer makes the question presented all the more important because it necessitates “ * * accommodating the reach of our own laws to those of other

maritime nations." *Lauritzen v. Larsen*, 345 U.S. 571, 577 (1953).

Respectfully submitted,

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December 18, 1986

APPENDIX



OPINION

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT**

January Term, A.D. 1986

Case No. 84-835

Opinion filed May 20, 1986

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Appellant,

—vs.—

ELIDA QUINTO de GARCIA, as Mother and Personal Representative of Carlos Enrique Dominguez Quinto, deceased,
Appellee.

An Appeal from the Circuit Court for Dade County, Richard S. Fuller, Judge.

Mitchell, Harris, Canning, Murray & Usich and C. Robert Murray, Jr., for appellant.

Horton, Perse & Ginsberg and Arnold R. Ginsberg; Huggett & Martucci, for appellee.

B e f o r e :

HENDRY, NESBITT and DANIEL S. PEARSON, *JJ.*

HENDRY, *Judge*.

Defendant Royal Netherlands Steamship Company appeals from a final judgment entered after a jury trial in this wrongful death action. We affirm.

Plaintiff's decedent, a ship painter by trade, was killed in a fall from one of appellant's ships while it was docked in a Guatemalan port. Plaintiff, decedent (her son) and decedent's two minor sons were Guatemalan nationals. Defendant was a Dutch corporation and the ship was of Dutch registry.

Plaintiff filed suit in the Eleventh Judicial Circuit Court of Florida seeking damages under United States general maritime law for unseaworthiness and negligence. Defendant moved to dismiss the complaint for lack of personal and subject matter jurisdiction.¹ The trial court ordered that initial discovery would be limited to jurisdictional questions only. Defendant failed to comply with this and several other orders of the trial court directing defendant to provide information pertinent to the issue of personal jurisdiction. After a hearing on plaintiff's motion for default, the trial court denied defendant's motion to dismiss, imposed personal jurisdiction as a sanction for the discovery violations and ordered defendant to file its answer. An appeal to this court was dismissed without opinion.

The cause was tried before a jury which returned a verdict in favor of plaintiff for \$2,000,000 (\$1,000,000 to the decedent's estate and \$1,000,000 to the survivors), to be reduced by decedent's 50% comparative negligence. On defendant's motion to correct the verdict, the trial court struck the award of \$1,000,000 to the estate, finding that the jury had confused the award to the estate and the award to the survivors. The \$1,000,000 award to the survivors remained intact. All of defendant's other post-trial motions were denied.

¹ The complaint alleged that the Dutch corporation had substantial contacts with both the State of Florida and the United States. Defendant admitted that it had an office in Miami and an agent in New York. All other jurisdictional facts were contested and were the subject of the trial court's discovery orders.

Defendant raises numerous points on appeal, challenging the trial court's orders on personal jurisdiction and subject matter jurisdiction and alleging error in the amount of the award to the estate. Defendant argues further that no award may be made to a decedent's estate under the general maritime law. We dispose of these issues on the following briefly stated analysis.

Defendant asserts that there isn't sufficient "connexity" between the events in Guatemala and Miami, Florida to allow a Florida circuit court to have personal jurisdiction over the parties. Given the facts of this case, defendant's point might be well taken but for the fact that personal jurisdiction was imposed by the trial court as a sanction for its repeated discovery violations. This particular sanction has been approved by the United States Supreme Court in *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinea*, 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982). The Court added the proviso that any sanction must be "just" and that the sanction must be specifically related to the particular "claim" which was at issue in the order to provide discovery. *Id.* at 456 U.S. 707, 102 S.Ct. 2107, 72 L.Ed.2d 504. In the case at bar, all of the facts necessary to prove or disprove minimum contacts with the State of Florida were within defendant's control. Discovery, at that stage of the proceeding, related solely to the personal jurisdiction issue. Without defendant's cooperation in the discovery process, the case could not go forward. Thus, when defendant repeatedly refused to provide the requested information, the trial court elected to impose an appropriate sanction.

The second issue raised and argued strenuously by defendant is that the trial court did not have subject matter jurisdiction over the claim. This assertion is without merit. Plaintiff filed this action under 28 U.S.C. § 1333, which permits plaintiff to bring her suit, even though it sounds in maritime law, in state court.² *Rubin v. Brutus Corp.*, 11 F.L.W. 903 (Fla. 1st DCA

2 28 U.S.C. § 1333 states, in relevant part:

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(footnote continued on following page)

Apr. 15, 1986). Thus, once the trial court had personal jurisdiction over the parties, there was no fundamental difference between this suit and any other tort action in a circuit court in Florida.³ See *id.* at 904 ("General maritime law has usually adopted and followed the principles of general tort law.")⁴

The cases cited by defendant regarding "subject matter jurisdiction" in fact raised choice of law considerations. While there were several instances during the proceedings below where defendant indicated that Guatemalan or Dutch law, rather than U.S. general maritime law, might apply, the issue was never formally presented to the trial court. Presumably, Guatemalan or Dutch maritime law would not differ in any material respect from U.S. general maritime law since modern maritime law is comprised of the ancient codes and customs of seafaring nations. See generally, 1 M. Norris, *The Law of Seamen* § 1:3 (4th ed. 1985). In any event, the failure to raise the issue properly below precludes our consideration of it here. *Ganem v. Ganem*, 269 So.2d 740 (Fla. 3d DCA 1972), *cert. denied*, 277 So.2d 284 (Fla. 1973); *Leary v. Gledhill*, 8 N.J. 260, 84 A.2d 725 (1951).

Defendant's final issue on appeal concerns whether the estate can be awarded damages under U.S. general maritime

(1) any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

3 The cases cited by defendant for the proposition that there was no subject matter jurisdiction in the circuit court were federal cases. Federal courts are courts of limited jurisdiction. The character of the controversies over which federal judicial authority may extend is delineated in Article III, section 2, clause 1, of the United States Constitution. Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction. This reflects the constitutional source of federal judicial power. *Insurance Corp. of Ireland v. Compagnie des Bauxites*, 456 U.S. at 701, 102 S.Ct. at 2104, 72 L.Ed.2d at 500. State courts do not labor under such limitations.

4 Defendant did not raise the issue of forum non conveniens on appeal.

law. It argues that under *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772, 26 L.Ed.2d 339 (1970), and its progeny, *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d 9 (1973), and *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 98 S.Ct. 2010, 56 L.Ed.2d 581 (1978), only survivors can be awarded damages and the damages must be solely pecuniary in nature. We note that, at the moment, this argument is moot since the trial court vacated the award to the estate on the grounds of jury confusion. We further note that this argument was raised for the first time in a post-trial motion. The jury was instructed on estate damages without any objection by the defendant. Defendant's failure to bring this argument to the attention of the trial court places this issue outside the scope of our review.

We have carefully considered all other issues raised by defendant and find that they are without merit.

The final judgment is affirmed.

COMPLAINT

**IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA**

GENERAL JURISDICTION DIVISION

CASE No: 81-11487

ELIDA QUINTO de GARCIA, as Mother and Personal Representa-
tive of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased,
Plaintiff,

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE,
CARIBBEAN OVERSEAS LINES, SS/HOLLANDIA, and WEST
OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSO-
CIATION, LTD.,
Defendants.

Plaintiff sues the Defendants and alleges that:

1. Plaintiff, ELIDA QUINTO de GARCIA, is the mother and Personal Representative of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased, and is sui juris and brings this action on behalf of herself and the children of the decedent, ESWIN OSWALDO DOMINGUEZ LOPEZ and MARLON ROEL DOMINGUEZ PAIZ, and all who are the former dependents of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased.

2. At all times material hereto, the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, was a seaman on board the vessel SS/HOLLANDIA and this action is brought pursuant to the General Maritime Law.

3. The vessel SS/HOLLANDIA was a cargo vessel being used by its owners and operators for the transportation of personnel and freight for hire in navigable waters and which had a base of operations in Miami, Dade County, Florida.

4. The Defendants, ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE, and CARIBBEAN OVERSEAS LINES, jointly, singularly, severally, and individually, owned, operated, chartered, controlled and acted as agent for the SS/HOLLANDIA at all times material hereto.

5. The vessel and its owners, both corporate and individual have substantial business contacts with the United States and more particularly are doing business in Miami, Dade County, Florida, have a base of operations in Miami, Dade County, Florida, conduct business in Miami and maintain offices in Miami, Dade County, Florida.

6. In particular, the Defendants, CARIBBEAN OVERSEAS LINES and CAROL LINE, maintain an office for business at 444 Brickell Avenue, Miami, Florida.

7. At all times material hereto, the flag and the registry of the SS/HOLLANDIA was illusory and the true owners, operators, controllers, and agents were the Defendants listed aforementioned who are United States citizens or who have substantial business contacts and a base of operations in the United States and more particularly in Miami, Dade County, Florida.

8. The WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION, LTD., pursuant to a policy of liability insurance, insured the vessel, SS/HOLLANDIA and the other Defendants for liability insurance and the Plaintiff is a third party beneficiary to that policy of insurance and claims her rights thereunder.

9. The vessel and its owners are subject to the jurisdiction of this Honorable Court by virtue of having substantial business contacts with the United States and more particularly with Miami, Dade County, Florida, maintaining a base of opera-

tions in Miami, Dade County, Florida and operating out of and maintaining offices in Miami, Dade County, Florida.

COUNT I

Plaintiff readopts and realleges all of the foregoing as if stated herein verbatim, and in addition alleges that:

10. On or about April 24th, 1978 while the vessel SS/HOLLANDIA was at Puerto Santo Tomas De Castilla, in Guatemala, the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, was working as a seaman on the vessel SS/HOLLANDIA, and was performing his duties as a seaman during the loading and unloading process of the vessel SS/HOLLANDIA, while docked. Although the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, had only been working as a seaman on board the SS/HOLLANDIA for two days, he was ordered on to the deck of the ship close to the edge to assist in the loading and unloading of the vessel while docked at the port at Puerto Santo Tomas De Castilla in Guatemala. During the loading and unloading of the vessel SS/HOLLANDIA, the vessel rolled excessively to the side and the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, was thrust over the side of the vessel striking the side of the vessel and falling into the water ultimately resulting in his death.

11. The Defendants failed to provide the decedent with a seaworthy vessel and equipment and such unseaworthiness was a proximate cause of the death of the decedent.

WHEREFORE, the Plaintiff, ELIDA QUINTO de GARCIA, as Personal Representative on behalf of herself and the minor children of the decedent, sues the Defendants, SS/HOLLANDIA, ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE, CARIBBEAN OVERSEAS LINES and WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION, LTD., for unseaworthiness, pursuant to the General Maritime Law and demands compensatory damages in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and requests a trial by jury of all issues so triable.

COUNT II

Plaintiff readopts and realleges all of the foregoing as if stated herein verbatim and in addition alleges that:

12. The Defendants were negligent or careless in one or more of the following acts of omission or commission:

- A. Failing to provide the decedent with a safe place to work;
- B. Failing to provide a safety net;
- C. Failing to have a safety line or attachment to the decedent's body;
- D. Failing to have a sufficient number of co-workers;
- E. Failing to have a guard railing around the edge of the vessel;
- F. Failing to have the vessel, SS/HOLLANDIA's equipment in satisfactory repair;
- G. Failing to warn the decedent of the dangerous and unsafe condition of working on board the deck of the vessel when there was no railing, no net, and no safety line;
- H. Failing to provide the decedent with adequate instructions and training with respect to the loading and unloading of the vessel;
- I. Requiring the decedent to perform extremely dangerous duties of loading and unloading on the deck of the vessel, SS/HOLLANDIA without any safety net or safety line or any training when the Defendants knew or should have known that such activities were extremely dangerous and knew or should have known that the decedent had no training in such matters and had only been a seaman on board the vessel for two days prior to his death;
- J. Failing to rescue the decedent when he fell over board the vessel, SS/HOLLANDIA and into the waters by the

vessel, SS/HOLLANDIA when docked at the Port of Santo Tomas De Castilla in Guatemala;

- K. Waiting for three (3) hours after the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, had fallen over board the vessel, SS/HOLLANDIA and the Defendants knew or should have known that the decedent had been injured and fallen over board the vessel before initiating rescue attempts.

13. This Count is brought for wrongful death pursuant to the General Maritime Law.

WHEREFORE, the Plaintiff, ELIDA QUINTO de GARCIA, as Personal Representative on behalf of herself and the minor children of the decedent, CARLOS ENRIQUE DOMINGUEZ QUINTO, sues the Defendants, SS/HOLLANDIA, ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE, CARIBBEAN OVERSEAS LINES, and WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION, LTD., for wrongful death pursuant to the General Maritime Law and demands compensatory damages in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) and requests a trial by jury of all issues so triable.

DATED: July 10th, 1981

LAW OFFICES OF WILLIAM HUGGETT
Attorneys for Plaintiff

BY: JOSEPH C. MARTUCCI
Joseph C. Martucci

PRE-ANSWER MOTION TO DISMISS

**IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA**

GENERAL JURISDICTION DIVISION

CASE NO. 81-11487-18

ELIDA QUINTO de GARCIA, as Mother and Personal Representative of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased,
Plaintiff,

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

COME NOW the Defendants, ROYAL NETHERLANDS STEAMSHIP COMPANY, and the SS/HOLLANDIA, by and through their undersigned attorneys, and, pursuant to Rule 1.140 and the other applicable rules of the Florida Rules of Civil Procedure, respectfully move this Honorable Court to dismiss the above-captioned cause; alternatively, for this Honorable Court to enter its Order requiring the Plaintiff herein to furnish these Defendants a more definite statement of the ultimate fact upon which the Plaintiff relies in prosecuting the above-captioned cause, and for reason therefore would show unto the Court as follows:

1. The Complaint filed herein fails to state a cause of action upon which relief can be granted in that:

a. The Complaint fails to allege sufficient ultimate fact to state a cause of action for unseaworthiness and/or negligence;

b. It affirmatively appears from the allegations of the Complaint that the U.S. General Maritime Law is inapplicable to the claims of the Plaintiff;

c. The claims of the Plaintiff are time barred by laches and/or 46 U.S.C. 763a;

2. There is insufficiency of process; insufficiency of service of process and lack of jurisdiction over the person of ROYAL NETHERLANDS STEAMSHIP COMPANY in that it affirmatively appears from the pleading that the claims of the Plaintiff do not arise out of any alleged business activity or conduct of business by said Defendant within the State of Florida; moreover, the Complaint fails to allege that the claims of the Plaintiff arose by reason of said Defendant doing business within the State of Florida.

3. There is lack of subject matter jurisdiction in that the Complaint alleges that the deceased was injured at Puerto Santo Tomas De Castilla, Guatemala; it is apparent from the return of Summons filed in this cause that the Defendants SS/HOLLANDIA and ROYAL NETHERLANDS STEAMSHIP COMPANY are of foreign citizenship; and there is no allegation that the Plaintiff or the beneficiaries for whom the Plaintiff makes claim, are Florida residents; alternatively, the Complaint fails to allege sufficient ultimate fact to posit venue for the alleged claims of the Plaintiff, within the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida.

4. As a matter of Law, there is lack of in rem jurisdiction over the vessel SS/HOLLANDIA.

5. The above-captioned cause should be dismissed under the Doctrine of Forum Non-Convenience in that:

a. The Law applicable to the occurrences not that of the United States, but of Guatemala; the accident or occurrence upon which the Plaintiff brings suit apparently occurred in Puerto Santo Tomas De Castilla, Guatemala, the location for important sources of proof, such as witnesses, medical records, etc.;

b. The forum of the Circuit Court of the Eleventh Judicial Circuit of Florida does not best suit the interests of the litigants, assuming the Plaintiff, whose residency is not alleged, to be of foreign citizenship and residency;

c. The utilization of the Eleventh Judicial Circuit in and for the State of Florida deprives the litigants of the availability of compulsory process for the attendance of unwilling witnesses; alternatively, the cost obtaining the attendance of such witnesses would be prohibitive;

d. Guatemala offers the possibility of a view of the accident scene;

e. There is no evidence that the Guatemala Courts are inaccessible to the Plaintiff herein;

f. The Plaintiff has failed to file and incorporate in the Complaint a copy of letters of administration or other documents supporting the Plaintiff's allegation that she is personal representative of the deceased, all of which in derogation of Rule 1.130 of the Florida Rules of Civil Procedure.

3. The Complaint is so vague and ambiguous that these Defendants cannot reasonably be required to frame a response thereto.

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss or For a More Definite Statement was mailed this 10th day of August, 1981, to: JOSEPH C. MARTUCCI, ESQ., Attorney for Plaintiff, Suite 1002, Concord Building, 66 West Flagler Street, Miami, Florida 33130.

LANE, MITCHELL & HARRIS, P.A.
*Attorneys for Royal Netherlands
and SS/Hollandia*
900 Security Trust Building
700 Brickell Avenue
Miami, Florida 33131

By: GEORGE O. MITCHELL
George O. Mitchell

ORDER DENYING PRE-ANSWER MOTION

IN THE CIRCUIT COURT
OF THE 11th JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 81-11487 CA 18

ELIDA QUINTO de GARCIA, et al.,

Plaintiffs,

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,

Defendants.

THIS CAUSE came on before the Court upon the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY's, various Motions to Dismiss the Complaint, and upon the Plaintiff's Motion for Default Judgment for the Defendant's refusal to comply with this Court's orders of May 24, 1982, and June 14, 1982, and the Court noting the Defendant's refusal to comply with this Court's orders of May 24, 1982 and June 14, 1982, having reviewed the memorandum of law submitted by both the Plaintiff and Defendant, heard argument of counsel and being fully advised in the premises it is,

ORDERED AND ADJUDGED that:

1. The Defendant's Motions to Dismiss the complaint are denied on all points.

2. The Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, shall file an answer to the Plaintiff's complaint within 30 days of the date of this order.

DONE AND ORDERED this 1st day of November, 1982.

JUDGE SAM I. SILVER
Circuit Court Judge

cc: to all counsel of record

ANSWER

IN THE CIRCUIT COURT
OF THE 11th JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE No. 81-11487 CA 18

ELIDA QUINTO de GARCIA, as Mother and Personal Representative of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased,
Plaintiff,

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, CAROL LINE,
CARIBBEAN OVERSEAS LINES, S/S HOLLANDIA, and
WEST OF ENGLAND SHIPOWNERS MUTUAL INSURANCE
ASSOCIATION, LTD.,
Defendants.

COMES NOW the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY (KONINKLIJKE NEDERLANDSCHE STOOMBOT MAATSCHAPPIJ, B.V.) by and through its undersigned attorneys, and for an Answer to the Complaint filed by the Plaintiff herein states as follows:

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not otherwise specifically admitted herein.

2. Defendant is without sufficient knowledge and information to form a belief as to the veracity of the allegations set forth in paragraph 1 of the Complaint and therefore denies same.

3. Defendant denies the allegations set forth in paragraphs 2 and 3 of the Complaint.

4. Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY (KONINKLIJKE NEDERLANDSCHE STOOMBOAT MAATSCHAPPIJ, B.V.) admits that at all times material hereto, it was the owner of the M/S HOLLANDIA.

5. This Defendant denies the allegations set forth in paragraphs 5, 7 and 9 of the Complaint.

6. Defendant admits the vessel HOLLANDIA is/was entered with the WEST OF ENGLAND as alleged in paragraph 8, however, Defendant denies the balance of the allegations set forth in paragraph 8.

7. Defendant admits that on or about April 24, 1978, the vessel S/S HOLLANDIA was in Porto Santo Tomas de Castilla, Guatemala; this Defendant denies the balance of the allegations set forth in paragraph 10 of the Complaint, specifically that decedent CARLOS ENRIQUE DOMINGUEZ-QUINTO was a seaman aboard the subject vessel.

8. Defendant denies the allegations set forth in paragraph 11.

9. This Defendant denies the allegations set forth in paragraph 12, including sub-parts (a) through (k) thereof.

10. This Defendant denies the allegations set forth in paragraph 13 of the Complaint.

11. Defendant affirmatively avers that the claims of the Plaintiff herein are time-barred by the doctrine of laches and/or the terms and provisions of 46 U.S.C. § 763(a).

12. Defendant further affirmatively avers that the Plaintiff's Complaint fails to state a cognizable cause of action in that the U.S. General Maritime Law is inapplicable to the claims of the Plaintiff; alternatively, or in addition, Plaintiff's decedent does not enjoy any status requisite to recovery against this Defendant based upon the theories of unseaworthiness and negligence alleged in the Complaint.

13. Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY (KONINKLIJKE NEDERLANDSCHE STOOMBOAT MAATSCHAPPIJ, B.V.) further affirmatively avers there is insufficiency of process, insufficiency of service of process, and lack of jurisdiction over the person of this Defendant so as to preclude maintenance and pursuit of this action.

14. Defendant further affirmatively avers this Court lacks subject matter jurisdiction over the claims alleged in the Plaintiff's Complaint.

15. Defendant further affirmatively avers that the Plaintiff's claims are not otherwise properly cognizable in the within Court based upon the Doctrine of Forum Non Conveniens.

16. Defendant further affirmatively avers that at all times material hereto, Plaintiff's decedent CARLOS ENRIQUE DOMINGUEZ QUINTO was himself negligent and such negligence proximately caused his death and/or the injuries complained of so as to bar any recovery of Plaintiff herein; alternatively, any recovery to which Plaintiff may be entitled, which is denied, must be reduced in accordance with the principles of comparative negligence to a degree reflecting the negligence of CARLOS ENRIQUE DOMINGUEZ QUINTO.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 5th day of April, 1983, to Joseph C. Martucci, Esq., 1002 Concord Bldg., 66 West Flagler Street, Miami, Florida.

MITCHELL, HARRIS, CANNING,
MURRAY & USICH, P.A.
Attorneys for Defendant
700 Brickell Avenue, Suite 900
Miami, Florida 33131

DAVID J. HERR

POST-TRIAL MOTION FOR JUDGMENT

IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE No. 81-11487 (CA 18)

ELIDA QUINTO de GARCIA, as mother and Personal Representative of ENRIQUE DOMINGUEZ QUINTO, deceased,
Plaintiff,

—vs—

ROYAL NETHERLANDS STEAMSHIP CO., etc.,
Defendant.

MOTION FOR JUDGMENT IN ACCORDANCE WITH
MOTION FOR DIRECTED VERDICT; OR IN THE
ALTERNATIVE, MOTION FOR NEW TRIAL

COMES NOW the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, (K.N.S.M.) by and through its undersigned attorneys, and, pursuant to Rule 1.480 (b)(c), and the other applicable rules of the Florida Rules of Civil Procedure, including Rule 1.530, respectfully moves this Honorable Court to enter Judgment in favor of the Defendant and against the Plaintiff herein, in accordance with the Defendant's Motion for Directed Verdict made during the course of the trial herein; in the alternative, the Defendant requests this Honorable Court to grant this Defendant a new trial on the merits as to

both liability and damages and for reasons therefore would show unto the Court as follows:

- 1) The verdict is contrary to law.
- 2) The verdict is contrary to the evidence.
- 3) The verdict is contrary to the law and the evidence.
- 4) The verdict is contrary to the weight of the credible evidence.
- 5) The verdict is contrary to the manifest justice of the cause and unless set aside, constitutes a miscarriage of justice.
- 6) The verdict is contrary to the manifest justice of the cause and unless set aside, constitutes a denial of due process to this Defendant.
- 7) The record in this cause does not support jurisdiction over the person of this Defendant.
- 8) The record in this cause does not support subject matter jurisdiction within this Honorable Court.
- 9) The record in this cause does not support application of the United States General Maritime Law to the claims of the Plaintiff.
- 10) The record in this cause does not support the right or legal capacity of the Plaintiff herein to advance the claims made on her own behalf or on behalf of Eswin or on the behalf of Marlon Dominguez.
- 11) The record in this cause unequivocally proves that the claims of the Plaintiff are barred by the Doctrine of Laches; further, that the Plaintiff has failed to meet her burden by demonstrating either: (a) excusable delay in the filing of the above-captioned cause; or (b) lack of prejudice to this Defendant by reason of the late filing of this cause.
- 12) The Court committed prejudicial error in permitting the jury herein to consider the claim advanced on behalf of the estate of Carlos Enrique Dominquez Quinto, upon the basis

that said claim was contrary to both the applicable law and the facts of the case as adduced at time of trial.

13) The Court committed prejudicial error in permitting the Plaintiff herein to call "rebuttal witnesses" at the conclusion of the Defendant's case, which witnesses were not disclosed on the Plaintiff's pretrial catalogue; which witnesses were not furnished the Defendant for deposition in derogation of the Court's earlier orders; which witnesses testified to new matters and/or matters which were not truly rebuttal but which were developed during the course of the Plaintiff's case in chief.

14) The verdict rendered by the jury herein is clearly excessive and not supported by the evidence adduced at trial. The evidence of pecuniary loss most favorable to the Plaintiff was the testimony of the mother, Elida Quinto, to the effect that her deceased son contributed 120 quetzales a month to the household. Any loss of earnings awarded the mother and two children must be predicated on the mother's life expectancy and the remaining period of minority of each child.

15) The Court committed prejudicial error in overruling the Defendant's Motion in Limine and permitting Dr. Melendrez to testify in the above-captioned cause; Dr. Melendrez' testimony dealt only with Marlon Dominguez' emotional response to the death of his father—an item of damages not recoverable under the General Maritime Law of the United States. Moreover, said doctor's testimony was speculative and not rendered within reasonable psychological probability.

16) The Court committed prejudicial error in permitting the jury to receive the testimony of expert witnesses Helgesen and Barber in as much as the witnesses were incompetent and their opinions were not based on proven fact. Both witnesses admitted they had never sailed on a Dutch ship; nor had either witness ever been to Puerto Santo Tomas de Castilla, and were therefore not familiar with the practices and customs followed in said port. Moreover, Captain Helgeson's testimony was an instruction upon law rather than expert testimony predicated upon the facts of the case and amounts to an expression or belief as to how the case should be decided and therefore was inadmissible.

17) It is apparent from the Court's disclosure of its inquiry of some of the jurors sitting in this cause, which inquiry was initiated with the consent of counsel following the rendition of the verdict in this cause, that the jurors did not understand the verdict form and that the verdict rendered in this case is a by-product of jury confusion and lack of understanding of the issues in this cause; more particularly it appears from the inquiry conducted by the Court that those jurors questioned did not return a verdict for the estate but, rather, added up the claims of the mother and two sons, erroneously placing the total of said three claims on the line of the verdict form reserved for an award for the estate, a separate item of damage. The net result of this error is a jury award in the amount of Two Million Dollars (\$2,000,000.00) in unreduced damages instead of One Million Dollars (\$1,000,000.00).

The jury's confusion is corroborated by the record, or perhaps better said, the lack of record, compiled during trial. The plaintiff adduced no evidence of funeral expense; no evidence of loss of accumulations nor any other pecuniary loss to decedent's estate. Indeed, counsel for the Plaintiff, in closing argument, did not even ask for damages to be awarded the estate. Finally, the Court did not deem the evidence sufficient to instruct the jury that funeral expenses or accumulations were recoverable; on the instructions given, the jury was only to consider future loss of decedent's earnings in terms of each beneficiaries' loss of support (qualified by each beneficiaries life expectancy or period of minority).

Should the Court elect to grant the Defendant's Motion for New Trial in lieu of entering Judgment in accordance with the Defendant's Motion For A Directed Verdict, such new trial must necessarily be had on *both the liability and damage issues* inasmuch as liability was hotly disputed in the instant cause, and all damage issues, necessarily interrelated with each other, must be viewed by a jury in terms of the comparative negligence of the Plaintiff's decedent. Bifurcation and/or singling out damages or individual damage issues, for new trial, would only serve to further compound the mistakes and misunderstanding of the jury, as well as to inject further prejudicial error into this cause.

18) The verdict is contrary to the law in that there was no proof adduced at the trial of this cause upon which a jury of reasonable men and women could find this Defendant liable to the Plaintiff herein. More particularly:

a) The Plaintiff failed to prove that this Defendant was negligent;

b) The Plaintiff failed to prove that negligence on the part of the Defendant was a legal cause of injury to the Plaintiff's decedent;

c) The Plaintiff failed to prove that this Defendant as a matter of law had a duty to supervise Plaintiff's decedent and/or furnish Plaintiff's decedent safety equipment;

d) The Plaintiff failed to prove that lack of supervision and/or furnishing safety equipment was a legal cause of injury and/or death to the decedent;

e) The Plaintiff failed to prove that the gangway watchman on duty at the time of the demise of Carlos Enrique Quinto Dominguez was negligent; or if negligent, that said negligence was a legal cause of injury or death to Plaintiff's decedent;

f) The Plaintiff failed to prove that this Defendant is liable for the acts of said gangway watchman;

g) The Plaintiff failed to prove that this Defendant had an obligation to supervise and/or direct said gangway watchman in his duties; and failed to prove that any lack of direction or supervision of said gangway watchman was the legal cause of injury and/or death of Plaintiff's decedent;

h) The Plaintiff failed to prove that Plaintiff's decedent was a seaman;

i) The Plaintiff failed to prove that this Defendant breached or violated any legally cognizable obligation or duty owed by this Defendant to the Plaintiff's decedent;

j) As a matter of law, this Defendant owed no responsibility to supervise the deceased or provide him with ship's equipment.

19) The Court committed prejudicial error in permitting the jury to receive evidence relative to decedent's alleged seaman status; and the Court created prejudicial error in instructing the jury on the decedent's alleged seaman status.

20) The Court committed prejudicial error in instructing the jury that if they found Plaintiff's decedent a seaman the jury was to determine if the Defendant was negligent, and if so, whether the Defendant's negligence was the legal cause of the injury and/or death of Plaintiff's decedent.

21) Plaintiff's counsel engaged in improper and prejudicial closing argument by throwing money on a set of scales on the counsel table; the effect of said improper and prejudicial behavior was to turn the courtroom into a circus; demean the judicial process; and reduced the courtroom decorum to one of "money changing in the temple".

22) The verdict rendered by the jury was the result of passion and prejudice rather than reasonable appraisal of the facts.

23) The verdict was based on patently false testimony.

24) The Court committed prejudicial error by allowing the Plaintiff's two eye-witnesses, Williams and Fajardo, to testify in narrative form, which narratives contained hearsay testimony, arguments in favor of the Plaintiff's case; and were generally not responsive to the questions posed by Plaintiff's counsel.

25) The Court committed prejudicial error in permitting both Helgesen and Barber to testify, which testimony, taken together, was cumulative and "weighted" the outcome of the case in favor of the plaintiff.

26) The Court committed prejudicial error in precluding Defendant's witness, Carlos Morales Aguilar, from testifying that Plaintiff's decedent was drunk immediately prior to the accident; this error was further compounded by permitting Plaintiff's counsel to produce "rebuttal" testimony to the effect that Plaintiff's decedent was not "drunk" on the morning of his demise.

27) The jury's verdict is patently contrary to the manifest weight of the credible evidence in that the jury found Plaintiff's decedent to be only 50% at fault for his own demise. The undisputed evidence of the case was that Plaintiff's decedent was responsible not only for the safety of his gang but also responsible for his own well being; the finding of 50% comparative negligence on the part of Plaintiff's decedent fails to accurately and sufficiently take into account the decedents own misconduct, disregard for his own well being, and failure to exercise reasonable care for his own safety.

28) The erroneous verdict of the jury reflects the failure of the Court to give certain requested charges by this Defendant, including Defendant's requested charges number 8; 16; 17 (a); and 19; the overall force and effect of which failure caused the jury not to be fully apprised of the applicable law and to believe this Defendant was the absolute insurer of the safety of Plaintiff's decedent.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was hand delivered this 20th day of January, 1984.

MITCHELL, HARRIS, CANNING, MURRAY
and USICH, P.A.
700 Brickell Avenue, Suite 900
Miami, Florida 33131

By: GEORGE O. MITCHELL
George O. Mitchell

ORDER DENYING POST-TRIAL MOTION

**IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA**

GENERAL JURISDICTION DIVISION

CASE No: 81-11487 (18)



ELIDA QUINTO de GARCIA, as Mother and Personal Representa-
tive of CARLOS ENRIQUE DOMINGUEZ QUINTO, deceased,
Plaintiff,

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendant.



**ORDER ON POST-TRIAL MOTIONS: 1) DENYING DE-
FENDANT'S MOTION FOR JUDGMENT NOTWITH-
STANDING THE VERDICT; 2) DENYING DEFENDANT'S
MOTION FOR NEW TRIAL ON LIABILITY; 3) GRANT-
ING DEFENDANT'S MOTION FOR NEW TRIAL ON THE
ISSUE OF DAMAGES TO THE ESTATE OF CARLOS
ENRIQUE DOMINGUEZ QUINTO AND DENYING A
NEW TRIAL AS TO ALL OTHER DAMAGE ISSUES;
4) DENYING RELIEF TO THE DEFENDANT ON THE
AFFIRMATIVE DEFENSE OF LACHES**

THE COURT, upon consideration of the motions for post-
trial relief filed by the defendant, ROYAL NETHERLANDS
STEAMSHIP COMPANY, after a review of the memorandum of
law in support thereof, having reviewed plaintiff's written
memorandum in opposition thereto, having presided over the
jury trial herein and being otherwise fully advised in the
premises, does hereby

ORDER AND ADJUDGE:

1. The defendant's Motion for Judgment Notwithstanding the Verdict be and the same is hereby denied;

2. The defendant's Motion for New Trial on the Issue of Liability be and the same is hereby denied;

3. The defendant's Motion for New Trial on the Issue of Damages be and the same is hereby denied except as to that portion of the jury verdict which awarded damages to the Estate of CARLOS ENRIQUE DOMINGUEZ QUINTO in an amount of One Million Dollars (\$1,000,000.00). To that claim, and to that claim only, a new trial on the issue of damages is awarded:

a. The verdict returned by the jury in an amount of \$1,000,000.00 is against the manifest weight of the evidence and was clearly a result of mistake on the jury's part. This Court notes as significant the assertion by plaintiff's counsel (as founded in plaintiff's memorandum of law filed post-trial) that the damages sustained by the estate *do not* support jury verdict for \$1,000,000.00.

b. This Court, with the permission and consent of counsel for both parties, contacted members of the jury panel. This Court's inquiry established that the award in favor of the estate's claim was erroneously computed and that it was not the intent of the jury to award \$1,000,000.00 to the estate.

c. That this Court is convinced, after questioning of the particular jurors, that the error related solely to mathematical computation and that the jury followed, in all other respects, this Court's instructions with particular emphasis upon Florida Standard Jury Instruction 2.4, directing the jury to consider *separately* "each claim" as it affects that party.

d. That the jury award in favor of the estate of the decedent in the amount of \$1,000,000.00 be and the same is hereby vacated and a new trial solely related to the claim of the estate is granted. See: *SOSA v. KNIGHT-RIDDER NEWSPAPERS, INC.*,

435 So. 2d 821 (Fla. 1983); WACKENHUT CORPORATION v. CANTY, 359 So. 2d 430 (Fla. 1978); and CLOUD v. FALLIS, 110 So. 2d 669 (Fla. 1959).

4. The defendant's motion for judgment in its favor on the basis that the equitable doctrine of laches has barred the plaintiff's claim be and the same is hereby denied. Assuming that the doctrine of laches requires this Court, under the facts and circumstances herein remaining, to resolve any factual dispute and/or apply to the undisputed facts a balancing of the equities, this Court finds, as a matter of fact, that no prejudice obtained to the defendant as a result of the alleged delay and, under the circumstances, the alleged late filing of this action was excusable. The Court finds against the defendant on the affirmative defense of laches.

5. The instant cause may be noticed for trial on the limited issue of damages to the estate upon motion of any interested party. This Court's final judgment dated January 25, 1984, in favor of the estate, be and the same is hereby vacated.

DONE AND ORDERED in Chambers this 23rd day of March, 1984, at Miami, Dade County, Florida.

Original Signed By
Richard S. Fuller

Richard S. Fuller
Circuit Judge

cc: Huggett & Martucci
Horton, Perse & Ginsberg
Mitchell, Harris, Canning,
Murray & Usich, P.A.

NOTICE OF APPEAL

**IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA**

GENERAL JURISDICTION DIVISION

CASE No: 81-11487 (18)

**ELIDA QUINTO de GARCIA, as Mother and Personal Representa-
tive of CARLOS ENRIQUE DOMINGUEZ QUINTO, Deceased,**
Plaintiff,

—vs.—

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendant.

NOTICE IS GIVEN that ROYAL NETHERLANDS STEAMSHIP COMPANY, Defendant, Appellant, appeals to the District Court of Appeal of Florida, Third District the orders of this Court rendered January 25, 1984 and March 23, 1984; the nature of the Orders is, respectively, a Final Judgment in favor of Plaintiffs and against Defendant and an Order on Post Trial Motions denying Defendant's Motion for Judgment Notwithstanding the Verdict, Motion for New Trial on Liability, Granting to Plaintiff a New Trial on the Issue of Damages to the Estate of one CARLOS ENRIQUE DOMINGUEZ QUINTO and Denying a New Trial as to All Other Damage Issues and Denying Relief to the Defendant on its Affirmative Defense of Laches.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: JOSEPH C. MARTUCCI, ESQ., Huggett & Martucci, 1002 Concord Building, 66 West Flagler Street, Miami, Florida 33130 on this 17 day of April, 1984.

MITCHELL, HARRIS, CANNING,
MURRAY & USICH, P.A.
2650 Biscayne Boulevard
Miami, Florida 33137
Tel: (305) 358-1405

BY: C. ROBERT MURRAY, JR.
C. Robert Murray, Jr.

ORDER DENYING DISCRETIONARY REVIEW

SUPREME COURT OF FLORIDA

DISTRICT COURT OF APPEAL,
THIRD DISTRICT NO. 84-835

THURSDAY, SEPTEMBER 25, 1986

CASE NO. 68,944

ROYAL NETHERLANDS STEAMSHIP COMPANY,
Petitioner,

—vs.—

ELIDA QUINTO de GARCIA,
Respondent.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

Petitioner's Motion for Leave to Reply to Respondent's Brief in Opposition to Jurisdiction treated as a Motion to Strike is hereby denied.

MCDONALD, C.J., ADKINS, BOYD, SHAW and BARKETT, J.J.,
concur

cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Richard S. Fuller, Judge
George O. Mitchell, Esquire
Arnold R. Ginsberg, Esquire

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: BETSY HILL
Deputy Clerk

[SEAL]

JAN 16 1987

JOSEPH F. SPANIOLO, JR.
CLERK

(2)
No. 86-1028

In the Supreme Court of the United States

OCTOBER TERM, 1986

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Petitioner,

—against—

ELIDA QUINTO de GARCIA,

Respondent.

**BRIEF OF RESPONDENT IN OPPOSITION TO WRIT
OF CERTIORARI TO THE FLORIDA THIRD
DISTRICT COURT OF APPEAL**

HORTON, PERSE & GINSBERG

ARNOLD R. GINSBERG

(Counsel of Record)

and

WILLIAM HUGGETT, ESQUIRE

Suite 410 Concord Building

66 West Flagler Street

Miami, Florida 33130

(305) 358-0427

Attorneys for Respondent

34pp

I.

QUESTION PRESENTED

The respondent respectfully restates the "QUESTION PRESENTED" so as to have it more accurately reflect the precise issues before the Court under the terms and circumstances of this case [See: Supreme Court Rules, Rule 21.1(a)]:

A.

WHETHER THE OPINION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA (1) IS IN DIRECT CONFLICT WITH ANY APPLICABLE DECISION OF THIS COURT, OR (2) DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT YET BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The respondent would further suggest there exists no compelling reason for this Court to review the merits of this case as the determinative issue will ultimately inquire:

B.

WHETHER THE TRIAL COURT GROSSLY ABUSED ITS DISCRETION IN DENYING—AS A DISCOVERY SANCTION—THE PETITIONER'S (DEFENDANT'S) MOTION TO DISMISS WHERE THE PETITIONER REPEATEDLY AND INTENTIONALLY REFUSED TO COMPLY WITH LAWFUL ORDERS OF COURT REQUIRING DISCOVERY ON THE ISSUES OF FORUM NON CONVENIENS, CHOICE OF LAW AND PERSONAL JURISDICTION.

II.

PARTIES/INTRODUCTION

The respondent, ELIDA QUINTO DE GARCIA, as mother and as personal representative of the Estate of Carlos Enrique Dominguez Quinto, deceased, for and on behalf of the Estate of Carlos Dominguez Quinto, and on behalf of the decedent's two sons, lawful claimants, Marlon and Eswan, was the plaintiff in the trial court, was the appellee on appeal to the District Court of Appeal, Third District, and was the respondent in the certiorari proceedings to the Florida Supreme Court. The petitioner was the defendant/appellant/petitioner. In this brief the parties will be referred to as the petitioner and the respondent and, alternatively, as "ROYAL NETHERLANDS" and as "QUINTO." The symbols "A" and "SA" will refer to the petitioner's appendix and the appendix accompanying this brief, respectively. All emphasis has been supplied by counsel unless indicated to the contrary.

III

III.

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IV

IV.

TABLE OF AUTHORITIES

Cases:

<i>Blanco v. Carigulf Lines, Ltd.</i> , 632 F. 2d 656 (5th Cir., 1980)	9, 11
<i>Insurance Corp. of Ireland, Ltd. v. Compagnie Des Dauxites De Guinea</i> , 456 U.S. 694, 72 L. Ed. 2d 492, 102 S. Ct. 2099 (1982)	2, 6, 7, 8
<i>Lauritzen v. Larsen</i> , 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953)	10, 11

Other Authorities:

28 U.S.C. § 1333	10
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V.

STATEMENT OF THE CASE

With all due respect to what the petitioner has recited in its "STATEMENT" *and* with further recognition of the contentions and arguments advanced in that portion of the petition denominated "REASONS FOR GRANTING THE WRIT", respondent suggests that *neither* the issue petitioner advances nor the basis upon which the Florida courts entered their rulings and decisions should be viewed in the abstract! As the Florida District Court of Appeal, Third District, stated:

* * *

"Defendant moved to dismiss the complaint for lack of personal and subject matter jurisdiction. *The trial court ordered that initial discovery would be limited to jurisdictional questions only.* Defendant failed to comply with this and several other orders of the trial court directing defendant to provide information pertinent to the issue of personal jurisdiction. After a hearing on plaintiff's motion for default, the trial court denied defendant's motion to dismiss, imposed personal jurisdiction as a *sanction* for the discovery violations and ordered defendant to file its answer. . ."

(A. 2).

* * *

Hence, this Court can clearly see that *what* the petitioner now complains about to this Court evolved not because the trial court ruled (one way or the other) on issues of jurisdiction, choice of law or forum non conveniens BUT BECAUSE THE DEFENDANT WOULD NOT, DID NOT AND REPEATEDLY REFUSED TO COMPLY WITH LAWFUL DISCOVERY ORDERS OF COURT which conduct *precluded* the trial court from considering, examining

and ruling upon all forum non conveniens issues! In point of fact, the District Court of Appeal, Third District, affirmed the trial court using as authority for its ruling this Court's decision in *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Dauxites De Guinea*, 456 U.S. 694, 72 L. Ed. 2d 492, 102 S. Ct. 2099 (1982).

The respondent would herein note that the starting point for the correctness vel non of the petitioner's argument must lie not with the "QUESTION PRESENTED" (as phrased by the petitioner) nor with the facts as petitioner *now* asserts them to be but rather with recognition of the fact that when the factual issues *should have been* considered:

A. Petitioner violated or repeatedly ignored numerous lawful orders of the trial court so that it would not have to "open up" its records to scrutiny (SA. 1-13);

B. Petitioner refused to produce any and all evidence concerning its contacts with the State of Florida or the United States (SA. 1-13). As a consequence the trial court *could not* (and subsequently did not) weigh, balance, consider, evaluate or rule upon questions concerning choice of law, forum non conveniens, minimum contacts, connexity, personal jurisdiction and any factual basis concerning the existence vel non of the subject cause of action;

C. [When the petitioner *should have raised* legal issues pertaining to the propriety of the sued upon cause of action] petitioner (for reasons known only to it) did not argue the issue to the Florida trial court: As the appellate court noted:

"While there were several instances during the proceedings below where defendant indicated that

Guatemalan or Dutch law, rather than United States general maritime law, might apply, the issue was never formally presented to the trial court. . . . In any event, the failure to raise the issue properly below precludes our consideration of it here. . . ." (A. 4).

In addition, legal argument pertaining to the existence vel non of the (now challenged) cause of action was never timely raised in the trial court nor was preservation of the issue attempted:

"We note that, at the moment, this argument is moot since the trial court vacated the award to the estate on the grounds of jury confusion. We *further note* that this argument was raised for the first time in a post-trial motion. The jury was instructed on estate damages without any objection by the defendant. Defendant's failure to bring this argument to the attention of the trial court places this issue outside the scope of our review." (A. 5).

The respondent reserves the right to argue the significance of the above events in the argument portion of this brief.

VI.

SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied. It is important to note that *none* of the many cases relied upon and cited by petitioner deals with the instant subject matter, to-wit: Trial court authority to enter sanctions as a consequence of a party litigant's *repeated failure* to comply with lawful (jurisdictional) discovery orders of court. The subject petitioner is (and always has been) *two steps away* from any merits consideration:

A. First, the petitioner has not demonstrated "conflict" in any pertinent regard. There is no conflict between the opinion herein sought to be reviewed and the cases cited in the subject petition. Factually, this case deals with the petitioner's *refusal* to comply with discovery orders and the resultant *inability* of the respondent to litigate the issues of personal jurisdiction, forum non conveniens, and choice of law. Since there is no conflict, the petition for certiorari should be denied;

B. Second, the petitioner is simply wrong in the arguments advanced. Petitioner *cannot reach* the merits of any issue arising out of "forum non conveniens", "choice of law" or "subject matter jurisdiction" facts because this case is in the posture in which it is as a *direct consequence* of petitioner's obdurate refusal to obey the lawful orders of a Florida trial court. Petitioner comes to this Court and argues that the state courts *failed to follow* substantive law! Petitioner fails (understandably) to (want to) acknowledge (to this Court) that it kept the trial court from resolving *potential* substantive issues by repeatedly *ignoring* respondent's requests for discovery and ignoring numerous trial court orders which—if complied with—would either have produced evidence on the issues or preserved petitioner's right to litigate the issues! Because the petitioner refused to comply with lawful orders of court, and because petitioner chose to follow a course of conduct which precluded the respondent from litigating an issue, the petitioner should not be heard to complain *under either* Florida or federal substantive or procedural law.

VII.

ARGUMENT**(IN OPPOSITION TO THE PETITIONER'S
REASONS FOR GRANTING THE WRIT)**

THE FLORIDA TRIAL COURT DID NOT ABUSE ITS DISCRETION (GROSSLY OR OTHERWISE) IN DENYING—AS A DISCOVERY SANCTION—THE PETITIONER'S MOTION TO DISMISS WHERE THE PETITIONER REPEATEDLY AND INTENTIONALLY REFUSED TO COMPLY WITH LAWFUL ORDERS OF COURT REQUIRING DISCOVERY ON THE ISSUES OF FORUM NON CONVENIENS, CHOICE OF LAW AND PERSONAL JURISDICTION. AS A CONSEQUENCE THE OPINION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, IS NEITHER IN DIRECT CONFLICT WITH ANY APPLICABLE DECISIONS OF THIS COURT NOR DID IT DECIDE AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT YET BEEN SETTLED BY THIS COURT.

At pages 6 and 7 of the subject petition the petitioner, after citing to numerous federal cases which have dealt generally with the question of remedies under federal maritime law for tortious deaths, concludes:

"The Florida Court of Appeals' decision below adds to the body of confused, conflicting lower court opinions on the important question of federal law which has not been, but should be, settled by this Court in executing its ' . . . responsibility for fashioning the controlling rules of admiralty law.'" (Petition, page 7).

The respondent would respectfully suggest to this Court that the petitioner: is wrong in its analysis of the subject issue; again ignores the fact that as a consequence of its obdurate refusal to respond to lawful orders of a trial court it has lost its privilege to argue the merits of forum non conveniens and choice of law issues; and, as a consequence, the subject petition for writ of certiorari should be denied.

Prior to this Court's opinion in *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Dauxites De Guinea*, supra, there existed a myriad of cases espousing conflicting opinions concerning whether or not a plaintiff suing an allegedly "foreign" defendant in the jurisdiction of that plaintiff's choice was required to make an independent showing of jurisdiction where, after the defendant sued refused to comply with jurisdictional discovery, the trial court deemed it necessary, as an appropriate sanction, to enter an order *denying* the defendant's motion to dismiss. In putting to rest any argument that a defendant can successfully *stonewall* a jurisdictional matter by *ignoring* lawful orders of court and in overruling *all* precedent to the contrary, this Court, in construing, interpreting and applying Rule 37 of the Federal Rules of Civil Procedure, specifically held that a trial court's action in establishing personal jurisdiction as a sanction for the failure to comply with discovery orders under the Rules of Civil Procedure *did not* violate due process even as to *jurisdictional matters*:

"... The expression of legal rights is often subject to certain procedural rules: the failure to follow those rules may well result in a curtailment of the rights. Thus, the failure to enter a timely objection to the personal jurisdiction constitutes, under Rule

12(h)(1), a waiver of the objection. A SANCTION UNDER RULE 37(b)(2)(A), CONSISTING OF A FINDING OF PERSONAL JURISDICTION, HAS PRECISELY THE SAME EFFECT. AS A GENERAL PROPOSITION, THE RULE 37 SANCTION APPLIED TO A FINDING OF PERSONAL JURISDICTION CREATES NO MORE OF THE DUE PROCESS PROBLEM THAN THE RULE 12 WAIVER. Although 'a court cannot conclude all persons interested by its mere assertion of its own power', not all rules that establish legal consequences to a party's own behavior are 'mere assertions' of power." 456 U.S. at pp. 705, 706.

The facts as found in *Insurance Corp. of Ireland*, supra, are not complex. In a suit involving foreign defendants, defenses of lack of in personam jurisdiction and forum non conveniens were raised. The plaintiff filed a discovery request in an attempt to establish jurisdictional facts. After defendant failed to comply with discovery orders, the trial court gave the defendant sixty more days to produce the requested information and warned that it would assume jurisdiction if the defendant did not do so. Several months later the Court, after concluding that the requested material had not been produced, imposed the threatened sanction—the foreign insurer was subject to the in personam jurisdiction of the court under the authority of Rule 37 of the Federal Rules of Civil Procedure. That rule (as does Florida Rule of Civil Procedure 1.380) authorizes a court, as a sanction for the defendant's failure to comply with discovery, to order that the matters (regarding which the orders were made) shall be taken as established (for purposes of the action in question). The United States Court of Appeals for the Third Circuit affirmed. Because the United States

Court of Appeals for the Fifth Circuit had previously indicated a contrary belief, this Court accepted review and ultimately identified the issue:

MAY A DISTRICT COURT, AS A SANCTION FOR FAILURE TO COMPLY WITH A DISCOVERY ORDER DIRECTED AT ESTABLISHING JURISDICTIONAL FACTS, PROCEED ON THE BASIS THAT PERSONAL JURISDICTION OVER THE RECALCITRANT PARTY HAS BEEN ESTABLISHED?

In rejecting all of the arguments advanced—arguments based on due process, procedural deficiencies, unfairness of the remedy, etc., this Court noted that the manner in which a trial court determines whether it has personal jurisdiction may include a variety of legal rules and presumptions, as well as straightforward fact finding. This Court further noted that the mere use of procedural rules does not, in itself, violate a defendant's due process rights. Recognizing that what the defendant (therein) sought to do was to contort and make complex a situation which was, at all times relevant, a "fairly straightforward matter" [See: *Insurance Corp. of Ireland*, supra, 456 U.S. at page 696], this Court, citing to prior precedent (regarding the proper scope and application of the sanction provisions of the Federal Rules of Civil Procedure) stated:

"The preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense." 456 U.S. at p. 705.

This Court further recognized that if there was no abuse of discretion in the application of the rule sanction, then the sanction would constitute nothing more than the in-

vocation of a legal presumption, or what is the same thing, the finding of a constructive waiver!

The arguments now advanced by the subject petitioner should not be reviewed on the merits. This is so because since the petitioner *never complied* with the respondent's lawful requests for discovery and *because* the petitioner *ignored* trial court orders directing compliance, the order denying the petitioner's motion to dismiss was entered. The petitioner's arguments are premised upon conclusions, the basis for which the petitioner would not let anyone discern. It must be emphasized and reemphasized that the trial court denied the petitioner's motion to dismiss *not because* the trial court "passed upon" the factual circumstances—or even because the trial court found that the petitioner's contacts were "sufficient" or "insufficient"—but because the petitioner would not allow anyone access to the information which would have resolved the issue.

With the above as a proper backdrop to the circumstances of this case, this respondent can now concur (with the petitioner) that the subject cause involves principles of federal admiralty jurisdiction. The respondent disputes now—as she did below—that the petitioner is entitled to ignore lawful orders of court simply because this case brings into play "the admiralty." In admiralty a defendant *cannot ignore* lawful discovery orders so as to be able to argue to a court (be it state or federal) its entitlement to dismissal based upon "forum non conveniens", "choice of law", "no personal jurisdiction", etc., grounds. As recognized by the Court in *Blanco v. Carigulf Lines, Ltd.*, 632 F. 2d 656 (5th Cir., 1980):

"Plaintiff is not required to rely exclusively upon a defendant's affidavit for resolution of the jurisdic-

tional issue where that defendant has failed to answer plaintiff's interrogatories specifically directed to that issue. TO HOLD OTHERWISE WOULD PERMIT AN ADVANTAGE TO A DEFENDANT WHO FAILS TO COMPLY WITH THE RULES OF DISCOVERY." 632 F. 2d at p. 658.

This Court can see from an examination of the decision herein sought to be reviewed:

A. That the District Court of Appeal of Florida, Third District, *acknowledged* that in matters of this type trial courts (both state and federal) have authority to enter appropriate (*jurisdictional*) sanctions where a party litigant repeatedly and intentionally refuses to comply with lawful orders of Court;

B. That the petitioner's reference to "subject matter jurisdiction" is now (as it has always been) without merit. Title 28 of the United States Code, § 1333, provides "savings to suitors" and grants to state courts "subject matter" jurisdiction to entertain cases "in admiralty." Hence, *at all times*, Florida courts have had "traditional" subject matter jurisdiction. See, for example: A. 3 and A. 4, and cases cited therein;

C. Questions relating to forum non conveniens, choice of law and venue [forum non conveniens and "subject matter" jurisdiction, the terms being interchangeable for purposes of determining whether or not a trial court should "keep a case", See: *Lauritzen v. Larsen*, 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953)] were precluded from trial court evaluation, ruling and appellate court review when the petitioner refused (for over a year) to comply with the respondent's discovery requests, as well as trial court orders (both) agreed to and judicially entered upon motion successfully made and granted (SA. 1-13).

An understanding of the above puts to rest the contention of the petitioner that the Florida Court of Appeal's decision "adds to the body of confused, conflicting lower court opinions on the important question of federal law which has not been, but should be, settled by this Court" as neither the trial court nor the District Court could (as the petitioner repeatedly intimates) apply the eight (factual) considerations of *Lauritzen v. Larsen*, supra, or its progeny, as long as the petitioner kept to itself evidence bearing on the issues. Both the trial court and the District Court adhered to "the admiralty" and would not yield to the petitioner's desire to gain an unfair advantage. *Blanco v. Carigulf Lines, Ltd.*, supra.

At pages 6 and 7 of its brief the petitioner argues that no matter where an admiralty suit is brought (state or federal court), the case "shall be determined by the maritime law" and not by the common law standards of the state. Respectfully, the District Court did, contrary to the petitioner's contentions, apply United States "general maritime law." See, for example, *Blanco v. Carigulf Lines, Ltd.*, supra, and cases cited therein. In point of fact, the petitioner does not like how the law was applied. However, federal maritime law was applied. In admiralty (as in other situations) a petitioner cannot withhold evidence bearing on either a jurisdictional or substantive issue and at the same time claim entitlement to relief. This petitioner tried to do this, this petitioner was sanctioned, and there exists no improper application of either state or federal law. The petitioner's arguments are patently without merit, there exists no conflict and the petition for writ of certiorari should be denied.

VIII.

CONCLUSION

It is respectfully submitted that for the reasons stated herein it can be concluded that the petitioner has failed to demonstrate any compelling reason for this Court to exercise its discretion and review this cause on the merits. The subject petition for writ of certiorari should be denied.

Respectfully submitted,

HORTON, PERSE & GINSBERG

and

WILLIAM HUGGETT, ESQUIRE

Suite 410 Concord Building

66 West Flagler Street

Miami, Florida 33130

(305) 358-0427

Attorneys for Respondent

By: ARNOLD R. GINSBERG

IX.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent in Opposition to Writ of Certiorari to the Florida Third District Court of Appeal, was served, by U.S. mail, this 15th day of January, 1987, on the following counsel of record:

WILLIAM M. KIMBALL, ESQ.

233 Broadway

New York, New York 10007

WILLIAM R.P. HOGAN, ESQ.

JOHN W. WALL, ESQ.

FREEHILL, HOGAN & MAHAR

80 Pine Street

New York, New York 10005

ARNOLD R. GINSBERG



SA. 1

APPENDIX

IN THE
CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 81-11487 (18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

**AGREED ORDER ON DEFENDANT'S
OBJECTIONS TO INTERROGATORIES**

THIS CAUSE came on before me upon Defendant's Objections to Interrogatories on December 11th, 1981 and the Court noting agreement of counsel and being fully advised in the premises, it is,

ORDERED AND ADJUDGED as follows:

1. As per agreement of counsel, Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, shall answer Interrogatories #1 through 15 which deal with the issue of jurisdiction and the Court reserves ruling on all the remaining interrogatories. Defendant shall deliver said answers to Plaintiff's counsel by December 29th, 1981.

SA. 2

2. As to Interrogatory #2, Defendant shall give the names and addresses of all charterers of the vessel for the time of the accident to-wit: 1978 and for the present time.

3. As to Interrogatory #5, Defendant shall give the names of all agents in the State of Florida.

DONE AND ORDERED at Miami, Dade County, Florida this 11 day of Dec, 1981.

Judge Sam I. Silver
Circuit Court Judge

copies furnished to:

Joseph C. Martucci
Attorney for Plaintiff

George O. Mitchell
Attorney for Defendants.

SA. 3

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 81-11487 (18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,
vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

**MOTION TO EXTEND TIME WITHIN WHICH TO
RESPOND TO REQUEST FOR ADMISSIONS**

COME NOW the Defendants, by and through their undersigned attorneys, and, pursuant to Rule 1.370, respectfully request this Honorable Court to extend the time for responding to Request for Admissions served by the Plaintiff upon these defendants on or about December 16, 1981, an additional thirty (30) days, or up to and including February 26, 1982, and for reason therefore would show unto the Court as follows:

1. The information necessary to respond to certain of the Request for Admissions must come from supervising counsel in New York City;
2. That due to the intervention of the holidays and the fact that New York counsel for the defendants is moving his offices, the undersigned believe they will not be able to respond to the Request for Admissions within the thirty (30) day time period prescribed by Rule 1.370.

SA. 4

WHEREFORE the Defendants request this Honorable Court to afford thirty (30) additional days, for a total of sixty (60) days, within which to respond to the Request for Admissions filed herein.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed to JOSEPH C. MARTUCCI, Esq., 66 West Flagler Street, Miami, Florida 33130 on this 21 day of December 1981.

Lane, Mitchell & Harris, P. A.
900 Security Trust Building
700 Brickell Avenue
Miami, Florida 33131

By: /s/ George O. Mitchell
George O. Mitchell

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 81-11487 (18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

RESPONSE TO REQUEST FOR ADMISSIONS

COMES NOW the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, et al., by and through the undersigned attorneys, and pursuant to Rule 1.370 and the other applicable Florida Rules of Civil Procedure, files the following response to the Request for Admissions propounded by the Plaintiff herein on or about December 14th, 1981:

1. Request for Admission No. 1: Admitted that Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY does business in Miami, Dade County, Florida; denied that the accident alleged in Plaintiffs' Complaint arose out of any business transacted by Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY in Florida.

2. Request for Admission No. 2: Objected to on the basis that same seeks responses which are immaterial and

irrelevant to the question of jurisdiction in the instant case.

3. Request for Admission No. 3: denied; sub-paragraph (a) of Request for Admission No. 3 is objected to on the basis that same is overbroad; and calculated to harass rather than lead to information which is relevant to the issue of jurisdiction in the instant case.

4. Request for Admission No. 4: denied; sub-paragraph (a) of Request for Admission No. 4 is objected to insofar as same refers to vessels other than the one alleged in Plaintiffs' Complaint, on the basis that same is overbroad; and not calculated to lead to the discovery of information material and relevant to the issue of jurisdiction in the instant case; said Request for Admission is also calculated to harass and create undue burden upon this Defendant in attempting to answer same.

5. Request for Admission No. 5: objected to on the basis that same is overbroad; and not calculated to lead to discovery of information material and relevant to the issue of jurisdiction in the instant case; said Request for Admission is also calculated to harass and create undue burden upon this Defendant in attempting to answer same.

6. Request for Admission No. 6: Objected to on the basis that same is overbroad; and not calculated to lead to the discovery of information material and relevant to the issue of jurisdiction in the instant case; said Request for Admission is also calculated to harass and create undue burden upon the Defendant in attempting to answer same.

Insofar as Request for Admission No. 6 relates to the subject vessel specified in the Plaintiffs' Complaint, said vessel does not call at any port in Florida and has operated, controlled, and/or chartered outside of Florida.

SA. 7

7. Request for Admission No. 7: Unknown, and therefore denied; with respect to the balance of Request for Admission No. 7, objected to on the basis that same is overbroad; and not calculated to lead to the discovery of information material and relevant to the issue of jurisdiction in the instant case; said Request for Admission is also calculated to harass and create undue burden upon this Defendant in attempting to answer same.

8. Request for Admission No. 8: Denied; Request for Admission No. 8(a): the locus of the accident alleged is available, Guatemala, also, the form of the ship's flag, Holland is also available.

Request for Admission 8(b): see response to 8(a) above.

Request for Admission 8(c): see response to 8(a) above.

Request for Admission 8(d): see response to 8(a) above.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of January, 1982, to Joseph C. Martucci, Esq., 1002 Concord Building, 66 West Flagler St., Miami, Florida.

Lane, Mitchell & Harris, P.A.
900 Security Trust Building
700 Brickell Avenue
Miami, Florida 33131

/s/ David J. Horr
David J. Horr

SA. 8

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 81-11487 (18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

ORDER

THIS CAUSE having come before the Court upon the Plaintiff's Motion to Compel Better Answers to Interrogatories, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Plaintiff's Motion to Compel Better Answers to Interrogatories is granted with respect to Interrogatory No. 5, and pursuant to said Interrogatory, Defendant shall provide the names and addresses of all agents in the United States at the time of the incident alleged in the Complaint.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 27 day of Jan, 1982.

Judge Sam I. Silver
Circuit Court Judge

Copies furnished to:

David J. Horr, Esq.

Joseph C. Martucci, Esq.

SA. 9

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 81-11487 (18)

ELIDA QUINTO de GARCIA, et al.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

ORDER

THIS CAUSE came on before the Court upon the Defendant's Motion to Dismiss and the Plaintiff's Motion to Compel and the Court having heard argument of counsel, reviewed the memorandums of Law submitted by both parties, reviewed the file and being fully advised in the premises it is,

ORDERED AND ADJUDGED that:

1. The Plaintiff's Motion to Compel discovery is granted and the Plaintiff is entitled to the following limited discovery by way of request for production and request for admission;

- a. A list of all stockholders of Defendant Royal Netherlands Steamship Company and a list of all stockholders which are United States Citizens;

- b. Business records of Defendant, Royal Netherlands Steamship Company showing the amount of income which the company received from business dealings with the United States, and the percentage of income received by Royal Netherlands Steamship Company from business dealings with connection to the United States in proportion to the total amount of business and income received by Royal Netherlands Steamship Company from 1978 to the present;
- c. Business records as to the base of operations of Royal Netherlands Steamship Company including business records demonstrating what cities and offices where most of Defendant Royal Netherlands Steamship Company's business is controlled or direct [sic] from.

Defendant shall produce these documents within 45 days of the date of this order.

2. The Plaintiff's request to file a supplemental Memorandum of Law is granted and Plaintiff shall file that Memorandum within 5 days after receipt of Defendant's production as ordered in paragraph 1.

3. The Court defers ruling on Defendant's Motion to Dismiss at this time in order to permit Plaintiff and the Court to obtain the above discovery.

DONE AND ORDERED this 24 day of May, 1982.

Judge Sam I. Silver
Circuit Court Judge

copies furnished to all counsel of record

SA. 11

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 81-11487 (18)

ELIDA QUINTO de GARCIA, et al.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

ORDER

THIS CAUSE came on before the Court upon the Defendants' Motion for Rehearing and/or Motion to Modify the Order entered on May 24, 1982 and the Court having heard argument of counsel, reviewed the file and being fully advised in the premises, it is

ORDERED AND ADJUDGED that the Defendants' Motion for Rehearing and/or Modify be and the same is denied. However, the Court shall limit discovery in 1 b of the order of May 24, 1982 for a period of time of one year prior to and one year subsequent to the accident giving rise to this lawsuit.

Defendants shall produce all of the documents referred to in both this order and the May 24, 1982 order within 45 days of the date of this order.

DONE AND ORDERED this 14 day of June, 1982.

Judge Sam I. Silver
Circuit Court Judge

copies furnished to all counsel of record

SA. 12

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 81-11487 (CA 18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

**STIPULATION AND ORDER GRANTING
EXTENSION OF TIME**

WE, the undersigned counsel of record, hereby agree and stipulate to extend Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, an additional thirty (30) days within which to complete discovery and otherwise comply with the Court's Order entered on June 14th, 1982.

Huggett & Martucci
66 West Flagler Street
1004 Concord Building
Miami, Florida 33130

Lane, Mitchell & Harris, P.A.
900 Security Trust Building
700 Brickell Avenue
Miami, Florida 33131

/s/ Joseph C. Martucci
Joseph C. Martucci

/s/ David J. Horr
David J. Horr

ORDER

THIS CAUSE came on to be heard ex parte upon stipulation for extension of time in which to complete discovery and comply with Court Order, and the Court having considered same and being otherwise fully advised in the premises, it is

ORDERED & ADJUDGED that the foregoing Stipulation for Extension of Time of thirty (30) days, be, and the same is, hereby granted.

DONE & ORDERED at Miami, Dade County, Florida, this 22 day of July, 1982.

Judge Sam I. Silver
Circuit Court Judge

SA. 14

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 81-11487 CA 18

ELIDA QUINTO de GARCIA, et al.,
Plaintiffs,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

THIS CAUSE came on before the Court upon the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY'S, various Motions to Dismiss the Complaint, and upon the Plaintiff's Motion for Default Judgment for the Defendant's refusal to comply with this Court's orders of May 24, 1982, and June 14, 1982, and the Court noting the Defendant's refusal to comply with this Court's orders of May 24, 1982 and June 14, 1982, having reviewed the memorandum of law submitted by both the Plaintiff and Defendant, heard argument of counsel and being fully advised in the premises it is,

ORDERED AND ADJUDGED that:

1. The Defendant's Motions to Dismiss the complaint are denied on all points.

SA. 15

2. The Defendant, ROYAL NETHERLANDS STEAM-SHIP COMPANY, shall file an answer to the Plaintiff's complaint within 30 days of the date of this order.

DONE AND ORDERED this 1 day of Nov, 1982.

Judge Sam I. Silver
Circuit Court Judge

cc: to all counsel of record

(3)
No. 86-1028

Supreme Court, U.S.

FILED

JAN 29 1987

**JOSEPH F. SPANIOL, JR.
CLERK**

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Petitioner,

—against—

ELIDA QUINTO de GARCIA,

Respondent.

**REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA THIRD DISTRICT COURT OF APPEAL**

WILLIAM M. KIMBALL
233 Broadway
New York, New York 10007
(212) 962-7750

Counsel of Record

Of Counsel:

WILLIAM R.P. HOGAN
JOHN W. WALL
FREEHILL, HOGAN & MAHAR
80 Pine Street
New York, New York 10005
(212) 425-1900



**REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA THIRD DISTRICT COURT OF APPEAL**

Respondent evades addressing the important substantive question presented by petitioner, of whether there is a remedy under United States general maritime law for tortious deaths in foreign territorial waters, by submitting a diversionary, distorted procedural question, of whether the Florida motion judge abused his discretion by sanctioning petitioner, which patently does not merit the Court's attention.

A cursory reading of the Florida appeal court's opinion indisputably confirms that the sanction imposed was "personal" jurisdiction (pet. 3a), not "subject matter" jurisdiction which, as stated in *Insurance Corp. v. Compagnie des Bauxites*, 456 U.S. 694 (1982), cited in the Florida court's opinion (*ib.*) and heavily relied upon by respondent: "no action of the parties can confer"; "principles of estoppel do not apply"; and "even an appellate court may review *sua sponte*," 456 U.S., pp. 702, 704.

Respondent jumbles stale issues of forum non conveniens and choice of laws, which petitioner does not seek to revive. On the contrary, the petition stresses that respondent sued "for wrongful death damages solely under United States general maritime law (2a, 6a, 8a, 10a)." (pet. 4); hence the question presented of whether there is a remedy under that law for death in foreign waters.

If, as respondent seemingly infers (brief 10, ¶ B), the Florida appeal court affirmatively answered that question by misapplying Florida substantive law under the "saving to suitors" provision, 28 U.S.C. § 1333(1), then the decision directly conflicts with numerous decisions by this Court, federal courts of appeals, and state courts of last resort, that substantive

issues in state court "saving to suitors" litigation are governed by federal maritime law.¹

Respondent has not suggested any valid reason why the petition should not be granted.

Respectfully submitted,

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January 28, 1987.

¹ *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372, 383-384 (1918); *Offshore Logistics, Inc. v. Tallentire*, ____ U.S. ____, 106 S.Ct. 2485, 2495 (1986); *Jansson v. Swedish American Line*, 185 F. 2d 212, 216 (1 Cir., 1950); *Igneri v. Cie de Transports Oceaniques*, 323 F. 2d 257, 259 (2 Cir., 1963), *cert. den.* 376 U.S. 949 (1964); *Celeste v. Prudential-Grace Lines*, 35 N.Y. 2d 60, 62-63 (1974); *Lavergne v. Western Co. of North America, Inc.*, 371 So. 2d 807, 809 (La., 1979).

